IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS MARSHALL DIVISION

ARCHER AND WHITE SALES, INC.,	§	
Plaintiff,	§ § 8	
v.	§	CIVIL ACTION NO. 2:12-CV-00572-JRG
	§	
HENRY SCHEIN, INC., DANAHER	§	
CORPORATION, INSTRUMENTARIUM	§	
DENTAL INC., DENTAL EQUIPMENT	§	
LLC, KAVO DENTAL TECHNOLOGIES,	§	
LLC, DENTAL IMAGING	§	
TECHNOLOGIES, CORPORATION,	§	
PATTERSON COMPANIES, INC.,	§	
BENCO DENTAL SUPPLY CO.,	§	
	§	
Defendants.	§	

<u>ORDER</u>

Before the Court is Defendant Henry Schein, Inc.'s Objections to Plaintiff's Summary Judgment Evidence (Dkt. No. 369); Defendant Benco Dental Supply Company's Objections to Plaintiff's Summary Judgment Evidence (Dkt. No. 364); Defendants Danaher Corporation, Instrumentarium Dental Inc., Dental Equipment LLC, Kavo Dental Technologies, LLC, and Dental Imaging Technologies Corp.'s Objections to Archer & White's Summary Judgment Evidence and Response to Plaintiff's Objection to Danaher Exhibit 49 (Dkt. No. 372) (collectively, the "Defendants' Objections to Summary Judgment Evidence").

Having reviewed the Defendants' Objections to Summary Judgment Evidence, the Court has determined that many of the objections are made in reference to evidence which Plaintiff Archer and White Sales, Inc. ("Archer") contends is admissible under Fed. R. Evid. 801(d)(2)(E). Fed. R. Evid. 801, in conjunction with Fed. R. Evid. 104, requires the Court to make a preliminary determination about the existence of a conspiracy that would support application of the exemption

in Fed. R. Evid. 801(d)(2)(E). In order to streamline the determination of admissibility of evidence under such exemption, the Court will address this issue at the pretrial hearing set for January 22, 2020. Accordingly, the Court **ORDERS** that Archer be prepared to identify admissible evidence that supports application of Rule 801(d)(2)(E) to each Defendant or entity from whom Archer intends to proffer coconspirator statements.

So Ordered this

Jan 20, 2020

RODNEY GILSTRAP

UNITED STATES DISTRICT JUDGE